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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/036,711	12/31/2001	Royce D. Jordan JR.	010568	5824

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KIRKPATRICK & LOCKHART LLP
535 SMITHFIELD STREET
PITTSBURGH, PA 15222

EXAMINER

HESS, DANIEL A

ART UNIT

PAPER NUMBER

2876

DATE MAILED: 04/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/036,711

Applicant(s)

JORDAN, ROYCE D.

Examiner

Daniel A Hess

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-48 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-48 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 December 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 7. 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 19 recites the limitation "the second wireless device" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 21 recites the limitation "the second wireless device" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 9-11, 15, 17-19, 26-28, 33-38 and 43-45 are rejected under 35 U.S.C. 102(b) as being anticipated by Seiderman (US 5,850,599).

Seiderman teaches a wireless credit card validation system having all of the elements and means as recited in claims 1-4, 9-11, 15, 17-19, 26-28, 33-38 and 43-45. For example, Seiderman teaches the following:

Re claims 1, 4, 17, : Observe Seiderman, column 3, lines 5-31. The IXC acts as the gateway. There is wireless connection through a cellphone (column 3, lines 15-16). There is a

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connection made from the IXC to a credit card validation computer (column 3, lines 17-19). A validation reply message comes back from this computer in response (column 3, lines 20-25).

Forming the completed circuit with the cell phone (column 3, lines 28-31) amounts to giving the cell phone a validation signal. This is because a connected call is an implicit indication of successful validation.

Re claims 2, 18: The credit card validation reply message (approval code) is stored (column 3, lines 24-28).

Re claims 3, 19: As is indicated (column 3, lines 30-40), an identification (serial number) is stored in the event that further calls are to be made.

Re claims 9, 10, 26, 27: Inherent -- normally we would expect that credit card information would require, at a minimum, credit card number and an expiration date for the credit card, in order to be sufficient for validation.

Re claim 11, 28: The card number (re claim 9 above) constitutes an identifier.

Re claim 15: A cell phone, disclosed in Seiderman, has a keypad.

Re claims 33 and 34: These claims indicate the presence of an intermediary between the validation requesting device and the card validation provider, which Seiderman shows.

Re claim 35 and 38: See discussion re claims 1 and 33 above.

Re claim 36: See discussion re claim 2 above.

Re claim 37: See discussion re claim 3 above.

Re claim 43: See discussion re claim 9 above.

Re claim 44: See discussion re claim 10 above.

Re claim 45: See discussion re claim 11 above.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 20 and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seiderman.

As has been seen, the credit card validation reply message (approval code) is stored (column 3, lines 24-28). Since storing backup data on database is old and well-known, it would have been obvious to one of ordinary skill in the art at the time the invention was made to store the second credit card validation reply message for the sake of redundancy.

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6. Claims 5, 22 and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seiderman as applied to claim 1 above, and further in view of Walker et al. (US 6,208,978).

Seiderman fails to show the access of credit card validation information over the Internet. Walker teaches (column 11, lines 58-63) the accessing of credit card validation information over the Internet.

In view of Walker's teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known Internet-based validation of credit card information for cost effectiveness reasons because Internet access was at the time of the invention, nearly ubiquitous.

7. Claims 6-8, 12, 13, 16, 23-25, 29, 30, 40-42, 46 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seiderman as applied to claim 1 above, and further in view of Harris (US 4,776,003).

Re claims 6, 12, 23, 29, 40, 46: Seiderman fails to show that validation takes place via text messages.

Harris teaches (abstract, line 13; column 5, lines 40-50) wireless credit card system validation via 'data messages.'

In view of Harris' teachings, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known text-messaging system for credit card validation because this means tends to result in very fast transmissions.

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Re claims 7, 8, 13, 24, 25, 30, 41, 42, 47: The different methods by which the text message is sent can be regarded as equivalent (in re Dillon) because one would expect different types of text messages to achieve roughly the same thing.

In In re Dillon, applicant claimed a composition comprising a hydrocarbon fuel and a sufficient amount of a tetra-orthoester of a specified formula to reduce the particulate emissions from the combustion of the fuel. The claims were rejected as obvious over a reference which taught hydrocarbon fuel compositions containing tri-orthoesters for dewatering fuels, in combination with a reference teaching the equivalence of tri-orthoesters and tetra-orthoesters as water scavengers in hydraulic (nonhydrocarbon) fluids. The Board affirmed the rejection finding “there was a reasonable expectation’ that the tri- and tetra-orthoester fuel compositions would have similar properties based on close structural and chemical similarity’ between the tri- and tetra-orthoesters and the fact that both the prior art and Dillon use these compounds as fuel additives’.” 919 F.2d at 692, 16 USPQ2d at 1900. The court held “it is not necessary in order to establish a prima facie case of obviousness . . . that there be a suggestion or expectation from the prior art that the claimed [invention] will have the same or a similar utility as one newly discovered by applicant,” and concluded that here a prima facie case was established because “[t]he art provided the motivation to make the claimed compositions in the expectation that they would have similar properties.” 919 F.2d at 693, 16 USPQ2d at 1901 (emphasis in original)

Re claim 16: Harris has (see figure 3, 304) a card reader as part of a wireless credit card validation system.

In view of Harris' teaching, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known card swiping means as taught by Harris in the teachings of Seiderman because this is more convenient and faster than using a keypad to type in all the digits.

8. Claims 14, 31, 32 and 48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Seiderman as applied to claim 1 above, and further in view of Neustein (US 6,418,305).

Seiderman fails to show the use of a pager as a device through which wireless credit validation is employed; instead a cell phone is used.

In Neustein, there is credit card validation (column 8, lines 50-55) on a pager system (column 1, lines 15-25).

In view of Neustein, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include the old and well-known credit card validation on a pager, because some people have a pager as their only means of wireless communication, and therefore such a system could draw a wider customer base.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Checchio (US 6,023,682) has relevant teaching (column 3, lines 15-30; column 4, lines 5-13). Also, Baker (US 6,505,046) has (column 10) relevant teaching.

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel A Hess whose telephone number is (703) 305-3841. The examiner can normally be reached on 8:00 AM - 5:00 PM M-F.

11. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael G Lee can be reached on (703) 305-3503. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-7722 for regular communications and (703) 308-7722 for After Final communications.

12. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0956.


DH
April 17, 2003

Daniel A Hess
Examiner
Art Unit 2876



THIEN M. LE
PRIMARY EXAMINER